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(Decree of Censure & Probation)

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1 2004 Agreement restricted Respondent's practice by requiring he practice in a group
2 practice and prohibiting him from prescribing Schedule II controlled substances and
3 required Respondent to enter the Board's Monitored Aftercare Program ("MAP") for the
4 treatment and rehabilitation of physicians impaired by alcohol or substance abuse.
5 Respondent has been fully compliant with all terms and conditions of the May 2004
6 Agreement.

7 4. On October 5, 2004 Respondent pled guilty to two Class 6 open-ended
8 felonies – facilitation to obtain a narcotic drug by fraud and compounding of obtaining a
9 narcotic drug by fraud. The remainder of the originally charged criminal counts were
10 dismissed. Respondent has been in compliance with his criminal probation and court
11 orders for community service and payment of funds.

12 5. During an investigative interview with Board Staff Respondent admitted to
13 all allegations noticed. Specifically, Respondent admitted he self-prescribed Ultram for
14 pain in 2002 and 2003; he used prescriptions of Vicodin and Oxycontin he received from
15 another physician in excess of his signed pain contract with that physician; he provided
16 patient care while he was impaired with excessive doses of Oxycontin; he wrote a
17 prescription for an antibiotic to the daughter of a patient without conducting an
18 examination or keeping a medical record; and he wrote a prescription for the husband of
19 a nurse he worked with in the emergency room without conducting an examination.

20 6. Respondent testified the whole reason for the Board to be considering this
21 matter is his fault. Respondent testified he takes full responsibility for everything that has
22 happened in this case and he is very sorry for what happened. Respondent testified he
23 was sorry for the embarrassment his actions brought to his colleagues in Payson and to
24 his family. Respondent stated he worked very hard to become physician after originally
25 starting off as a meat cutter and then a paramedic on the fire department. Respondent

1 testified he started his medical education when he was thirty-four and did not finish his
2 residency until he was forty-five. Respondent noted he had only practiced for three years
3 before he messed things up.

4 7. Respondent noted he is proud that this whole incident has allowed him to
5 be introspective in a way he would not otherwise have been. Respondent testified that in
6 recovery he has been able to settle down and come to grips with his spirituality and has
7 been able to learn how to get along with others. Respondent noted he has learned the
8 value of life and that he loves life. Respondent testified he was terribly embarrassed by
9 the whole incident and was prepared to answer any questions the Board had and he
10 intended to do so honestly and professionally.

11 8. The Board noted that Respondent's opening comments addressed most of
12 the concerns and noted that part of the recovery process is the acknowledgment that
13 there is a problem. Respondent agreed and stated his sobriety date as February 24,
14 2004. Respondent was asked to describe his relapse prevention strategy. Respondent
15 noted he is compliant with all requirements of MAP and it is a good program.
16 Respondent testified that MAP is very rigorous and keeps him involved on a daily basis
17 as far as attending meetings, group therapy, random color of the day, and a medication
18 log, among other things. Respondent also testified that over and above the MAP
19 requirements he does community service hours and they help him understand what he
20 did wrong, why he is here today. Respondent testified the most important thing for him is
21 that he has become very spiritual and prays everyday. Respondent also noted he has
22 started teaching Sunday school and his involvement with his church helps with his
23 sobriety. Respondent testified his commitment to sobriety is rock hard and has been
24 since he got out of rehabilitation.

9. The Board noted it has seen a lot of physicians with dependency issues and it appreciated the efforts Respondent was making and understood the constraints Respondent was under in terms of MAP and the court-ordered rehabilitation. Respondent was reminded that addiction was a lifelong illness and was asked what he was going to do one-year from now or five years from now when he gets the urge. Respondent testified he has already felt that urge and has called his sponsor, his girlfriend, his friends, and his mom for support and it helps him. Respondent was asked what his practice setting would be. Respondent testified he has a turn-key clinic that is ready to go in Springerville, Arizona.

10. Respondent testified that in the last year and one-half, along with learning more about how he fits into the world, he learned that he is a good physician and that he has a knack for making diagnoses and doing procedures. Respondent notes he has also suffered a lot and he caused his own suffering. Respondent testified he currently had no home and has a turn-key clinic that he walks through every day and he would love to start seeing patients again. Respondent testified he uses electronic medical records and his computers are all networked and he is ready to go. Respondent testified he understood his problem arose out of being in a solo practice and also working in the emergency room – doing both jobs full-time. Respondent testified it was not his intention to work two jobs again, but it was his intention to do a good job in a family practice setting in his community. Respondent noted his suffering had humbled him and he asked that the Board look at the restrictions on his license and realize that the restriction and his felony convictions have handicapped him from finding employment. Respondent asked the Board for leniency so that he might salvage his career.

11. David Greenberg, M.D., the contracted addiction medicine specialist for the Board informed the Board that he had reviewed the offer made by Thomas Bennett, D.O.

1 to monitor Respondent's prescribing practices. Dr. Greenberg noted Dr. Bennett is a
2 respected member of the Apache County medical community and Dr. Bennett has known
3 Respondent for over ten years and believes Respondent is a good physician and is
4 impressed with his recovery. Dr. Greenberg also noted that with Dr. Bennett monitoring
5 Respondent and the Board's MAP monitoring the Board could consider allowing
6 Respondent to return to a solo practice.

7 12. The Board voted to amend the May 2004 Agreement to allow Respondent
8 to immediately return to practice under the auspices of Dr. Bennett. The remainder of
9 May 2004 Agreement was to remain in effect until the effective date of this Order.

10 13. The standard of care required Respondent to provide patient care while not
11 impaired by excessive doses of Oxycontin.

12 14. Respondent deviated from the standard of care when he provided patient
13 care while under the influence of excessive doses of Oxycontin.

14 15. Respondent's conduct exposed his patients to potential harm because his
15 judgment could have been affected by the Oxycontin.

16 **CONCLUSIONS OF LAW**

17 1. The Arizona Medical Board possesses jurisdiction over the subject matter
18 hereof and over Respondent.

19 2. The Board has received substantial evidence supporting the Findings of
20 Fact described above and said findings constitute unprofessional conduct or other
21 grounds for the Board to take disciplinary action.

22 3. The conduct and circumstances described above constitutes unprofessional
23 conduct pursuant to A.R.S. § 32-1401(27)(d) ("[c]ommitting a felony, whether or not
24 involving moral turpitude, or a misdemeanor involving moral turpitude. In either case,
25 conviction by a court of competent jurisdiction or a plea of no contest is conclusive

evidence of the commission;") 32-1401(27)(e) ("[f]ailing or refusing to maintain adequate records on a patient;") 32-1401(27)(f) ("[h]abitual intemperance in the use of alcohol or habitual substance abuse;") 32-1401(27)(g) ("[u]sing controlled substances except if prescribed by another physician for use during a prescribed course of treatment;") 32-1401(27)(j) ("[p]rescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes;") and 32-1401(27)(q) ("[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.")

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS
HEREBY ORDERED that:

1. Respondent is issued a Decree of Censure for the above described conduct.

2. The May 12, 2004 Interim Consent Agreement for Practice Restriction and Participation in the Monitored Aftercare Program is terminated on the effective date of this Order¹.

3. Respondent is placed on probation for five years subject to the following terms and conditions:

A. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation. The declarations shall be submitted on or before the 15th of March, June, September and December of each year, beginning on or before March 2006.

¹ The vacation of the May 12, 2004 Interim Consent Agreement also vacates the August 15, 2005 amendment to the Interim Consent Agreement.

1 B. Respondent shall practice in association with Thomas Bennett, D.O.
2 pursuant to the following:

3 Respondent shall ensure that:

4 1. Dr. Bennett periodically, at his own will, reviews Respondent's
5 medical records and charts;

6 2. Respondent establishes procedures with Dr. Bennett for monitoring
7 of scheduled medications (scheduled medication logs). The logs are made available to
8 Dr. Bennett upon request and are reviewed regularly. The logs include diagnoses and
9 brief rationale for the use of the scheduled medication. Dr. Bennett randomly checks the
10 medical record, or patient chart, to ensure the medical record or chart is congruent with
11 all log entries;

12 3. Dr. Bennett provides a quarterly report to the Board that includes any
13 concerns he may have regarding Respondent's character and/or medical practices. Dr.
14 Bennett also includes any reassurances he believes are merited;

15 4. Dr. Bennett understands that David Greenberg, M.D., the Board's
16 contracted addiction medicine specialist, may call Dr. Bennett and or Dr. Bennett may call
17 Dr. Greenberg to discuss any and all aspects of Respondent's case and Respondent
18 gives authorization for this purpose;

19 5. If Respondent's association with Dr. Bennett terminates for any
20 reason Respondent shall contact Board Staff and provide the name of another physician
21 who agrees to serve in Dr. Bennett's role. Board Staff shall approve of the substitute
22 physician.

23 C. Respondent shall not prescribe Schedule II controlled substances for a
24 period of two years. The time Respondent's prescribing has already been restricted
25 under the May 2004 Agreement shall be counted in the calculation of the two-year period.

1 D. **Participation.** Respondent shall promptly enroll in and participate in the
2 Monitored Aftercare Program ("MAP") for the treatment and rehabilitation of physicians
3 who are impaired by alcohol or drug abuse. Respondent's participation in MAP may be
4 unilaterally terminated with or without cause at the Board's discretion at any time after the
5 issuance of this Order. Respondent shall participate in MAP pursuant to the following:

6 1. **Group Therapy.** Respondent shall attend MAP's group therapy sessions
7 one time per week for the duration of this Order, unless excused by the MAP group
8 therapist for good cause such as illness or vacation. Respondent shall instruct the MAP
9 group therapist to release to Board Staff, upon request, all records relating to
10 Respondent's treatment, and to submit monthly reports to Board Staff regarding
11 attendance and progress. The reports shall be submitted on or before the 10th day of
12 each month.

13 2. **12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-
14 step meetings or other self-help group meetings appropriate for substance abuse and
15 approved by Board Staff, for a period of ninety days beginning not later than either (a) the
16 first day following Respondent's discharge from chemical dependency treatment or (b) the
17 date of this Order.

18 3. Following completion of the ninety meetings in ninety days, Respondent shall
19 participate in a 12-step recovery program or other self-help program appropriate for
20 substance abuse as recommended by the MAP group therapist and approved by Board
21 Staff. Respondent shall attend a minimum of three 12-step or other self-help program
22 meetings per week.

23 4. **Board-Staff Approved Primary Care Physician.** Respondent shall
24 promptly obtain a primary care physician and shall submit the name of the physician to
25 Board Staff in writing for approval. The Board-approved primary care physician ("PCP")

shall be in charge of providing and coordinating Respondent's medical care and treatment. Except in an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP and from health care providers to whom the PCP refers Respondent. Respondent shall request that the PCP document all referrals in the medical record. Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and provide a copy of this Order the PCP. Respondent shall also inform all other health care providers who provide medical care or treatment that Respondent is participating in MAP:

a. "*Emergency*" means a serious accident or sudden illness that, if not treated immediately, may result in a long-term medical problem or loss of life.

5. Medication. Except in an *Emergency*, Respondent shall take no *Medication* unless the PCP or other health care provider to whom the PCP refers Respondent prescribes the *Medication*. Respondent shall not self-prescribe any *Medication*.

a. "*Medication*" means a prescription-only drug, controlled substance, and over-the counter preparation; other than plain aspirin, plain ibuprofen, and plain acetaminophen.

6. If a controlled substance is prescribed, dispensed, or is administered to Respondent by any person other than PCP, Respondent shall notify the PCP in writing within 48 hours. The notification shall contain all information required for the medication log entry specified in paragraph 7. Respondent shall request that the notification be made a part of the medical record. This paragraph does not authorize Respondent to take any *Medication* other than in accordance with paragraph 5.

7. Medication Log. Respondent shall maintain a current legible log of all *Medication* taken by or administered to Respondent, and shall make the log available to the Board Staff upon request. For *Medication* (other than controlled substances) taken on an on-going basis, Respondent may comply with this paragraph by logging the first and

1 last administration of the *Medication* and all changes in dosage or frequency. The log, at
2 a minimum, shall include the following:

- 3 a. Name and dosage of *Medication* taken or administered;
- 4 b. Date taken or administered;
- 5 c. Name of prescribing or administering physician;
- 6 d. Reason *Medication* was prescribed or administered.

7 This paragraph does not authorize Respondent to take any *Medication* other than in
8 accordance with paragraph 5.

9 **8. No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol or
10 any food or other substance containing poppy seeds or alcohol.

11 **9. Biological Fluid Collection.** During all times that Respondent is physically
12 present in the State of Arizona and such other times as Board Staff may direct,
13 Respondent shall promptly comply with requests from Board Staff, the MAP group
14 therapist, or the MAP Director to submit to witnessed biological fluid collection. If
15 Respondent is directed to contact an automated telephone message system to determine
16 when to provide a specimen, Respondent shall do so within the hours specified by Board
17 Staff. For the purposes of this paragraph, in the case of an in-person request, "promptly
18 comply" means "immediately." In the case of a telephonic request, "promptly comply"
19 means that, except for good cause shown, Respondent shall appear and submit to
20 specimen collection not later than two hours after telephonic notice to appear is given.
21 The Board in its sole discretion shall determine good cause.

22 **10.** Respondent shall provide Board Staff in writing with one telephone number
23 that shall be used to contact Respondent on a 24 hour per day/seven day per week basis
24 to submit to biological fluid collection. For the purposes of this section, telephonic notice
25 shall be deemed given at the time a message to appear is left at the contact telephone

number provided by Respondent. Respondent authorizes any person or organization conducting tests on the collected samples to provide testing results to the Board and the MAP Director.

11. Respondent shall cooperate with collection site personnel regarding biological fluid collection. Repeated complaints from collection site personnel regarding Respondent's lack of cooperation regarding collection may be grounds for termination from MAP.

12. **Out of State Travel and/or Unavailability at Home or Office Telephone Number.** Respondent shall provide Board Staff at least three business days advance written notice of any plans to be away from office or home when such absence would prohibit Respondent from responding to an order to provide a biological fluid specimen or from responding to communications from the Board. The notice shall state the reason for the intended absence from home or office, and shall provide a telephone number that may be used to contact Respondent.

13. **Payment for Services.** Respondent shall pay for all costs, including personnel and contractor costs, associated with participating in MAP at time service is rendered, or within 30 days of each invoice sent to Respondent.

14. **Examination.** Respondent shall submit to mental, physical, and medical competency examinations at such times and under such conditions as directed by the Board to assist the Board in monitoring Respondent's ability to safely perform as a physician and Respondent's compliance with the terms of this Order.

15. **Treatment.** Respondent shall submit to all medical, substance abuse, and mental health care and treatment ordered by the Board, or recommended by the MAP Director.

16. **Obey All Laws.** Respondent shall obey all federal, state and local laws, and

all rules governing the practice of medicine in the State of Arizona.

17. Interviews. Respondent shall appear in person before the Board and its Staff and MAP committees for interviews upon request, upon reasonable notice.

18. Address and Phone Changes, Notice. Respondent shall immediately notify the Board in writing of any change in office or home addresses and telephone numbers.

19. Relapse, Violation. In the event of chemical dependency relapse by Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent shall promptly enter into an Interim Consent Agreement for Practice Restriction that requires, among other things, that Respondent not practice medicine until such time as Respondent successfully completes an inpatient or residential treatment program for chemical dependency designated by Board Staff and obtains affirmative approval from the Board or the Executive Director to return to the practice of medicine. Prior to approving Respondent's request to return to the practice of medicine, Respondent may be required to submit to witnessed biological fluid collection, undergo any combination of physical examination, psychiatric or psychological evaluation and/or successfully pass the special purpose licensing examination or the Board may conduct interviews for the purpose of assisting it in determining the ability of Respondent to safely return to the practice of medicine. **In no respect shall the terms of this paragraph restrict the Board's authority to initiate and take disciplinary action for violation of this Order.**

20. Notice Requirements.

(a) Respondent shall immediately provide a copy of this Order to all employers and all hospitals and free standing surgery centers where Respondent currently has privileges. Within 30 days of the date of this Order, Respondent shall provide the Board with a signed statement of compliance with this notification requirement. Upon any

1 change in employer or upon the granting of privileges at additional hospitals and free
2 standing surgery centers, Respondent shall provide the employer, hospital or free standing
3 surgery center with a copy of this Order. Within 30 days of a change in employer or upon
4 the granting of privileges at additional hospitals and free standing surgery centers,
5 Respondent shall provide the Board with a signed statement of compliance with this
6 notification requirement.

7 (b) Respondent is further required to notify, in writing, all employers,
8 hospitals and free standing surgery centers where Respondent currently has or in the
9 future gains employment or privileges, of a chemical dependency relapse, use of drugs or
10 alcohol in violation of this Order and/or entry into a treatment program. Within seven days
11 of any of these events Respondent shall provide the Board written confirmation of
12 compliance with this notification requirement.

13 (c) Respondent shall immediately submit to the Board under penalty of
14 perjury, on a form provided by the Board, the name(s) and address(es) of all employers
15 and all hospitals and free standing surgery centers where Respondent currently holds
16 privileges to practice. Respondent is further required to, under penalty of perjury, on a
17 form provided by the Board, immediately notify the Board of any changes in employment
18 and of any hospitals and free standing surgery centers where Respondent gains privileges
19 after the effective date of this Order.

20 **21. Public Record.** This Order is a public record.

21 **22. Out-of-State.** In the event Respondent resides or practices as a physician
22 in a state other than Arizona, Respondent shall participate in the rehabilitation program
23 sponsored by that state's medical licensing authority or medical society. Respondent
24 shall cause the monitoring state's program to provide written reports to the Board
25 regarding Respondent's attendance, participation, and monitoring. The reports shall be

1 due quarterly on or before the 15th day of March, June, September, and December of
2 each year, until the Board terminates this requirement in writing. The monitoring state's
3 program and Respondent shall immediately notify the Board if Respondent: a) is non-
4 compliant with any aspect of the monitoring requirements; b) relapses; c) tests positive
5 for controlled substances; d) has low specific gravity urine drug test(s), missed and/or
6 late urine drug tests, or otherwise rejected urine drug tests; and e) is required to undergo
7 any additional treatment.

8 **23.** This Order supersedes all previous consent agreements and stipulations
9 between the Board and/or the Executive Director and Respondent.

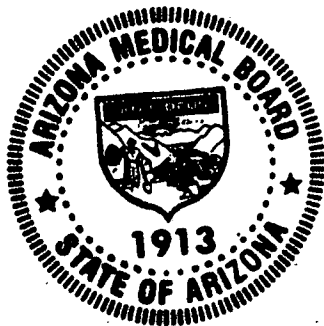
10 **24.** The Board retains jurisdiction and may initiate new action based upon any
11 violation of this Order.

12 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

13 Respondent is hereby notified that he has the right to petition for a rehearing or
14 review. The petition for rehearing or review must be filed with the Board's Executive
15 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The
16 petition for rehearing or review must set forth legally sufficient reasons for granting a
17 rehearing or review. A.A.C. R4-16-102. Service of this order is effective five (5) days
18 after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not
19 filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to
20 Respondent.

21 Respondent is further notified that the filing of a motion for rehearing or review is
22 required to preserve any rights of appeal to the Superior Court.
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1 DATED this 13th day of October, 2005.



THE ARIZONA MEDICAL BOARD

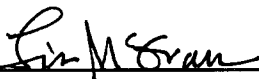
8 By 
9 TIMOTHY C. MILLER, J.D.
10 Executive Director

11 ORIGINAL of the foregoing filed this
12 13th day of October, 2005 with:

13 Arizona Medical Board
14 9545 East Doubletree Ranch Road
15 Scottsdale, Arizona 85258

16 Executed copy of the foregoing
17 mailed by U.S. Certified Mail this
18 13th day of October, 2005, to:

19 Mark R. Mouritsen, M.D.
20 Address of Record

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